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ABSTRACT

Rules 20:13:12 through 20:03:22 are interpretations by the commission of SDCL Chapter 20-13, as it covers education. 11 new Chapters read as follows: 20:03:12--General; 20:03:13--Public Education. Each educational institution shall ensure that members of its community are informed of the South Dakota Human Relations Act of 1972 as amended as it relates to equal educational opportunities, and shall ensure that such persons are aware that all courses of study, educational programs, extra-curricular and athletic activities and financial assistance, service, aid, and benefits are available without discrimination on the basis of race, color, creed, religion, sex, national origin or ancestry. 29:13:14--Discrimination in school admissions; 20:13:15--Discrimination in financial assistance and other forms of aid; 20:13:16--Discrimination in admission to courses of study and educational programs; 20:13:17--Discrimination in course content; 20:13:18--Discrimination in guidance and counseling; 20:13:19--Discrimination in estra-curricular and athletic activities; 20:03:20--Discrimination because of pregnancy and related conditions; 20:03:21--Discrimination because of marital or parental status; and, 20:03:22--Discrimination in housing and facilities. (JM)

ED106381

RULES

OF

THE SOUTH DAKOTA COMMISSION ON HUMAN RIGHTS

PROPOSED January 3, 1975

Pursuant to the authority of SDCL 20-13-27

the following rules are proposed for adoption

CHAPTERS 20:03:12 to 20:03:22

Article 20:03 is amended by adding eleven new Chapters reading as follows:

20:03:12 General.

20:03:13 Public education.

20:03:14 Discrimination in school admissions.

20:03:15 Discrimination in financial assistance and other forms of aid.

20:03:16 Discrimination in admission to courses of study and educational programs.

20:03:17 Discrimination in course content.

20:03:18 Discrimination in guidance and counseling.

20:03:19 Discrimination in extra-curricular and athletic activities.

20:03:20 Discrimination because of pregnancy and related conditions.

20:03:21 Discrimination because of marital or parental status.

20:03:22 Discrimination in housing and facilities.

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CHAPTER 20:03:12

GENERAL

20:03:12:01 Purpose of regulations.
20:03:12:02 Educational institution defined.

20:03:12:01 Purpose of regulations. Rules 20:03:12 through 20:03:22 are interpretations by the commission of the South Dakota Human Relations Act of 1972, SDCL Chapter 20-13, as it covers education. These rules will be used to determine the commission's treatment of individual education cases as they arise.

General Authority: SDCL 20-13-27. Law Implemented: SDCL 1-26-1(7) 20-13-7, 20-13-28

20:03:12:02 Educational institution defined. Educational institution as used in these and subsequent rules shall mean each public or private institution of education offering or conducting instruction, programs, activities, or training on any level in any area, and includes each agent of such institution.

General Authority: SDCL 20-13-27. Law Implemented: SDCL 20-13-1(11)

CHAPTER 20:03:13

PUBLIC EDUCATION

20:03:13:01 Public education.

20:03:13:01 Public education. Each educational institution shall ensure that members of the community which it serves, parents, taxpayers, and students are informed of the existence of the South Dakota Human Relations Act of 1972 as amended as it relates to equal educational opportunities, and shall ensure that such persons are aware that all courses of study, educational programs, extra-curricular and athletic activities, and financial assistance, service, aid, and benefits are available without discrimination on the basis of race, color, creed, religion, sex, national origin, or ancestry.

General Authority: SDCL 20-13-27. Law Implemented: SDCL 20-13-22.

CHAPTER 20:03:14

DISCRIMINATION IN SCHOOL ADMISSIONS

20:03:14:01 Scope and coverage.
20:03:14:02 Discouragement of certain applicants.
20:03:14:03 Affirmative efforts.

20:03:14:01 Scope and coverage. All educational institutions covered by the South Dakota Human Relations Act of 1972, SDCL 20-13, shall admit students without regard to race, color, creed, religion, sex, national origin, or ancestry, except as may be permitted by SDCL 20-13-22.

General Authority: SDCL 20-13-27. Law Implemented: SDCL 20-13-22(2), 20-13-22(3).

20:03:14:02 Discouragement of certain applicants. No educational institution may discourage in any express or implied manner, applicants for admission because of race, color, creed, religion, sex, national origin, or ancestry, except as may be permitted by SDCL 20-13-22. Written and pictorial representations in written materials used by an educational institution to recruit students for the institution or for courses or activities within the institution shall depict students of both sexes and of minority groups. Implied or explicit references to only one sex in the names of educational institutions, programs, courses, or activities shall not be retained.

General Authority: SDCL 20-13-27. Law Implemented: SDCL 20-13-22(2), 20-13-22(3).

20:03:14:03 Affirmative efforts. Each educational institution shall make active efforts to inform the community which it serves that race, color, creed, religion, sex, national origin, or ancestry are not considered as criteria for admission to that school, particularly where past practice, custom or other cause might reasonably be expected to reduce attendance from some class of students.

General Authority: SDCL 20-13-27. Law Implemented: SDCL 20-13-22(2), 20-13-22(3).

CHAPTER 20:03:15

DISCRIMINATION IN FINANCIAL ASSISTANCE AND OTHER FORMS OF AID

20:03:15:01 Scope and coverage.
20:03:15:02 Treatment of students.
20:03:15:03 Contributions.
20:03:15:04 Benefits and services.

20:03:15:01 Scope and coverage. In providing financial assistance to any of its students an educational institution shall not on the basis of race, color, creed, religion, sex, national origin, or ancestry, provide different types or amounts of such assistance, limit eligibility for such assistance on the basis of its type or source, apply different criteria, or otherwise discriminate.

General Authority: SDCL 20-13-27. Law Implemented: SDCL 20-13-22(1), 20-13-22(2).

20:03:15:02 Treatment of students. In providing any aid, service, or benefit to a student an educational institution shall not, on the basis of race, color, creed, religion, sex, national origin, or ancestry. treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, service, or benefit; provide different aid, service, or benefit or provide aid, service or benefit in a different manner; deny any person any such aid, service, or benefit; subject any person to seperate or different rules of behavior or treatment; discriminate against any person in the application of any rules of appearance; discriminate against any person by assisting any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit, or service to students, except for single-sex social sororities and fraternities; or otherwise limit any person in the enjoyment of any rights, privilege, advantage, or opportunity.

General Authority: SDCL 20-13-27. Law Implemented: SDCL 20-13-22(1), 20-13-22(2).

20:03:15:03 Contributions. An educational institution shall not accept any contributions for activities within or sponsored by the educational institution or for scholarships, fellowships, or loans administered directly or indirectly by the institution or for any other purpose related to the program of the institution made by any person, group, or organization except the federal or any tribal government unless the contributions shall be free from any restrictions based upon race, color, creed, religion, sex, national origin, or ancestry.

General Authority: SDCL 20-13-27. Law Implemented: SDCL 20-13-22(1), 20-13-22(2).

20:03:15:04 Benefits and services. In providing medical, hospital, accident, or life insurance benefit, service, policy, or plan to any of its students, an educational institution shall not discriminate on the basis of race, color, creed, religion, sex, national origin, or ancestry. This section shall not prohibit a recipient from providing any benefit or service which may be used by a different proportion of students of one sex than of the other, including family planning services.

General Authority: SDCL 20-13-27. Law Implemented: SDCL 20-13-22(1), 20-13-22(2).

CHAPTER 20:03:16

DISCRIMINATION IN ADMISSION TO COURSES OF STUDY AND EDUCATIONAL PROGRAMS

20:03:16:01 Scope and coverage.
20:03:16:02 Courses required.
20:03:16:03 Prerequisities and cumulative program requirements.

20:03:16:01 Scope and coverage. Each and every class, course of study, and educational program offered by an educational institution shall be open and available to students without discrimination based on race, color, creed, religion, sex, national origin, or ancestry. An educational institution shall not provide any class, course of study, or educational program separately on the basis of sex, including, but not limited to health, physical education, industrial, business, vocational, technical, and home economics courses, except that specific classes in sex education and reproduction offered as a part of health or physical education courses may be conducted separately on the basis of sex.

General Authority: SDCL 20-13-27. Law Implemented: SDCL 20-13-22(1), 20-13-22(2).

20:03:16:02 Courses required. The determination of what courses or units of study are to be required of any students shall be made without regard to the race, color, creed, religion, sex, national origin, or ancestry of the student.

General Authority: SDCL 20-13-27. Law Implemented: SDCL 20-13-22(1), 20-13-22(2).

20:03:16:03 Prerequisites and cumulative program requirements. If participation in a class, course of study or educational program is dependent upon the participation in or completion of courses or programs which were previously limited to students of a particular race, color, creed, religion, sex, national origin, or ancestry, or if close scrutiny reveals that access mechanisms or other administrative arrangements have illegally or unfairly limited the opportunities of any such class of students to participate in

such courses or programs, then an opportunity shall be made available to the previously excluded group or groups to acquire the prerequisites. If it cannot be shown that the prerequisite course or program is essential for success in a given program, the prerequisite shall be abolished.

General Authority: SDCL 20-13-27. Law Implemented: SDCL 20-13-22(1), 20-13-22(2).

CHAPTER 20:03:17

DISCRIMINATION IN COURSE CONTENT

20:03:17:01 Course content.

20:03:17:01 Course content. The content of all educational institution curriculum shall reflect affirmative efforts to present in full and fair perspective the history, activities, sensibilities, and contributions of persons and groups of diverse races, colors, national origins, religions, and of both sexes. School books and other educational materials used in educational institutions shall include characterizations and situations which depict a broad variety of positive roles by individuals regardless of race, color, creed, religion, sex, national origin, or ancestry. Books and other educational materials shall depict the equality and contributions of all persons regardless of race, color, creed, religion, sex, national origin, or ancestry.

General Authority: SDCL 20-13-27. Law Implemented: SDCL 20-13-22(1) 20-13-22(2).

CHAPTER 20:03:18

DISCRIMINATION IN GUIDANCE AND COUNSELING

20:03:18:01 Use of materials or tests.
20:03:18:02 Uniform application.
20:03:18:03 Occupational programs.
20:03:18:04 Encouragement by school personnel.
20:03:18:05 Assistance in obtaining future education opportunity or employment for students.

20:03:18:01 Use of materials or tests. No guidance materials or tests shall be used by educational institutions which exclude persons of a particular race, color, creed, religion, sex, national origin, or ancestry from considering certain occupations or which provide different scores based on race, color, creed, religion, sex, national origin, or ancestry. Manuals which suggest that students be guided toward selecting only certain occupations on the basis of their sex shall not be used, nor shall manuals be used which stereotype occupations by race, color, creed, religion, sex, national origin, or ancestry.

General Authority: SDCL 20-13-27. Law Implemented: SDCL 20-13-22(1), 20-13-22(2).

20:03:18:02 Uniform application. An educational institution shall not use different testing or guidance materials for different students based on their sex, or use materials which permit or require different treatment of students on such basis.

General Authority: SDCL 20-13-27. Law Implemented: SDCL 20-13-22(1), 20-13-22(2).

20:03:18:03 Occupational programs. Career day programs and other occupational programs and materials shall include representatives of both sexes in a variety of occupations and shall present minority group members in a broad variety of occupational roles. Educational institutions shall not permit materials to be used to recruit students for training or employment that do not eliminate all references to race, color, creed, religion, sex,

national origin, or ancestry, except references to equal educational and employment opportunity. Any pictorial representations in such materials shall depict members of both sexes and various minority groups.

General Authority: SDCL 20-13-27. Law Implemented: SDCL 20-13-22(1), 20-13-22(2).

20:03:18:04 Encouragement by school personnel. Guidance counselors and other school personnel shall be trained and encouraged to represent to the students as broad a spectrum as possible of education and career opportunities for a given student. Race, color, creed, religion, sex, national origin, or ancestry shall not be considered as limiting factors in career selection.

General Authority: SDCL 20-13-27. Law Implemented: SDCL 20-13-22(1), 20-13-22(2).

20:03:18:05 Assistance in obtaining future education opportunity or employment for students. Any educational institution which through solicitation, listing, approval, provision of facilities, or other services, assists any agency, employer, organization, or person in making further educational opportunities or employment available to any of its students shall take such action as may be necessary to ensure that such educational opportunity or employment is made available without discrimination on the basis of race, color, creed, religion, sex, national origin, or ancestry, and shall not render such services to any agency, employer, organization, or person which discriminates on the basis of race, color, creed, religion, sex, national origin, or ancestry in making available such educational opportunity or employment.

General Authority: SDCL 20-13-27. Law Implemented: SDCL 20-13-22(1), 20-13-22(2).

CHAPTER 20:03:19

DISCRIMINATION IN EXTRA-CURRICULAR AND ATHLETIC ACTIVITIES

20:03:19:01 Scope and coverage.
20:03:19:02 Criteria for participation.
20:03:19:03 Selection and operation of activities.
20:03:19:04 Competitive athletics defined.
20:03:19:05 Equal opportunity defined.
20:03:19:06 Provision of equal opportunity.
20:03:19:07 Operation of competitive athletics.
20:03:19:08 Operation of separate teams in the same sport.
20:03:19:09 Operation of comparable sports.
20:03:19:10 Joining other organizations.
20:03:19:11 Affirmative action.

20:03:19:01 Scope and coverage. No student shall be denied the opportunity in any implied or explicit manner to participate in any extra-curricular or athletic activity because of the race, color, creed, religion, sex, national origin, or ancestry of that student, except as provided in §§20:03:19:02 to 20:03:19:11, inclusive.

General Authority: SDCL 20-13-27. Law Implemented: SDCL 20-13-22(1), 20-13-22-(2).

20:03:19:02 Criteria for participation. Participation in athletic and extra-curricular activities shall be actively encouraged by each educational institution for both boys and girls and for racial and ethnic minorities. Criteria for participation in specific athletic or extra-curricular activities which act to exclude members of a particular race, color, creed, religion, sex, national origin, or ancestry, unless such criteria can be shown to be reasonably related to participation in the specific activity, shall not be permitted.

General Authority: SDCL 20-13-27. Law Implemented: SDCL 20-13-22(1), 20-13-22(2).

20:03:19:03 Selection and operation of activities. Except as may be provided herein, no educational institution shall provide any extra-curricular or athletic activity separately on the basis of sex. An educational institution shall not discriminate on the basis of sex in selection of sports

which it offers or in other extra-curricular activities.

General Authority: SDCL 20-13-27. Law Implemented: SDCL 20-13-22(1), 20-13-22(2).

20:03:19:04 Competitive athletics defined. For the purposes of §§20:03:19:05 to 20:03:19:11, inclusive, "competitive athletics" shall mean all athletic teams operated by an educational institution, the selection for which is based on competitive skill, and includes all training, coaching, and other activities related thereto.

General Authority: SDCL 20-13-27. Law Implemented: SDCL 20-13-22(1), SDCL 20-13-22(2).

20:03:19:05 Equal opportunity defined. The phrase "equal opportunity" when used in reference to competitive athletics shall mean that the proportion of each sex of students participating in the competitve athletic program shall be approximately the same as the proportion of each sex in the entire student body with the following exception: a school which otherwise complies with this chapter shall be considered in compliance with this section if such school demonstrates to the satisfaction of the commission that the higher proportionate participation by members of one sex reflects greater interest in competitive athletics on the part of all students of that sex as a group and that the lower proportionate participation by members of the other sex does not reflect discrimination on the basis of sex in the selection or recruitment for participation in competitve athletics or in the selection of competitve sports to be offered, or failure to provide adequate affirmative action to eradicate the effects of previous discrimination, or discouragement of interest, or harrassment practiced by school personnel.

General Authority: SDCL 20-13-27. Law Implemented: SDCL 20-13-22(1), 20-13-22(2).

20:03:19:06 Provision of equal opportunity. Any school which operates a competitive athletic program shall provide students of each sex an equal opportunity to participate therein without discrimination on the basis of sex.

In determining whether an educational institution is providing equal opportunity, the commission will consider the following criteria: scheduling of games and practice times; allocating of facilities; providing of opportunity to receive coaching and instruction; providing of equipment, supplies, locker rooms, toilets, and showers; providing of transportation and perdiem allowances for travel; supplying of medical, laundry, and maintenance services; providing of officials for games; and providing of publicity, awards, and encouragement of the student body to attend contests and to generally support the athletic teams of the institution. While this section does not mandate absolute equality in any given criteria, in measuring the stated criteria the commission will consider the following comparisons: funds allocated per participant by sex for sports offered separately to both sexes; funds allocated per participant by sex for the total competitive athletic program; coaching ratios by sex for sports offered separately to both sexes; coaching ratios by sex for the total competitive athletic program; number of hours of athletic activity provided by sex for sports offered separately to both sexes; number of hours of athletic activity provided by sex for the total competitive athletic program; and number of different sports provided for members of each sex.

General Authority: SDCL 20-13-27. Law Implemented: SDCL 20-13-22(1), 20-13-22(2).

20:03:19:07 Operation of competitive athletics. An educational institution which operates competitive athletics may, in any particular sport, operate separate teams for each sex, or a single coeducational team, so long as an equal opportunity to participate in that sport is provided to members of both sexes. If there is not sufficient interest on the part of the members of a particular sex to allow for the provision of a separate team in that sport, and if the nature of the sport is such that an equal opportunity could not be

provided by the operation of a coeducational team, the educational institution shall provide a comparable sport in which there is sufficient interest to the members of that particular sex.

General Authority: SDCL 20-13-27. Law Implemented: SDCL 20-13-22(1), 20-13-22(2).

20:03:19:08 Operation of separate teams in the same sport. If an educational institution operates separate teams in a particular sport: the teams must be operated for each sex, except as provided in §20:03:19:07 where there is not sufficient interest to allow for the provision of a separate team in that sport; the teams must be equal or comparable in length of season, number and level of games scheduled, number and level of championship games available, quality of facility assigned for scheduled games and for practice sessions, number, duration, and desirability of time of day for practice sessions, number and expertise of coaches proportionate to number of participants, and budget expended per participant; the teams must be operated during the same season unless it can be demonstrated by an educational institution wishing to operate separate teams in the same sport at different seasons that the two proposed seasons are of comparable desirability for the particular sport involved, and that separate seasons are necessary for compliance with other sections of this chapter; team activity may be conducted separately on the basis of sex only in those aspects of the activity in which separation is desirable or necessary in order to comply with other sections of these rules including actual competition in contests, tryouts for team membership, or practice of team skills; and such teams shall operate jointly in all other aspects, including practice of basic skills, training, and conditioning, unless such teams operate in different seasons as provided by this section.

General Authority: SDCL 20-13-27. Law Implemented: SDCL 20-13-22(1), 20-13-22(2).

20:03:19:09 Operation of comparable sports. Where an educational insti-

tution does not operate a separate team for each sex in a particular sport and can demonstrate that equal opportunity would not be provided by the operation of a coeducational team, the opportunity provided to participate in a comparable sport shall conform substantially to §20:03:19:08 for the operation of separate teams in the same sport.

General Authority: SDCL 20-13-27. Law Implemented: SDCL 20-13-22(1), 20-13-22(2).

20:03:19:10 Joining other organizations. Any educational institution may join any organization, association or league which has as its objective the promotion of sport or the adoption of rules and regulations for the conduct of athletic contests among students; provided, such organization, association, or league: does not limit competition, make rules and regulation, or otherwise advance policies which have the effect of impairing the ability of its member institutions to comply with these rules; does not discriminate on the basis of sex in providing for athletic contests at the state, regional, district, local, or any other level; provides rules governing seasons and the conduct of athletic contests separately on the basis of sex for separate team competition unless such rules and seasons are of comparable uniformity and do not have the effect of discriminating on the basis of sex; provides for competition between separate teams of both sexes and between coeducational teams of its member schools; and does not discriminate on the basis of sex in the operation of the association, organization, or league, or in its employment practices.

General Authority: SDCL 20-13-27. Law Implemented: SDCL 20-13-22(1), 20-13-22(2).

20:03:19:11 Affirmative Action. When competitive athletic opportunities for members of a particular sex have previously not been equal as specified in this chapter to opportunities provided for members of the other sex, the educational institution shall: determine in what sports members of the de-

prived sex would desire to compete and whether or not the teams will be conducted separately on the basis of sex; provide competitive athletic opportunities in such sports through such teams; and inform members of such deprived sex of the availability to them of competitive athletic opportunities equal to those available for members of the other sex.

General Authority: SDCL 20-13-27. Law Implementing: SDCL 20-13-22(1), 20-13-22(2).

CHAPTER 20:03:20

DISCRIMINATION BECAUSE OF PREGNANCY AND RELATED CONDITIONS

20:03:20:01 Scope and coverage.
20:03:20:02 Treatment as temporary disability.

20:03:20:01 Scope and coverage. An educational institution shall not discriminate against any student, or exclude any student from its education program or activity or any part thereof, on the basis of such student's pregnancy, childbirth, miscarriage, abortion, or recovery therefrom.

General Authority: SDCL 20-13-27. Law Implemented: SDCL 20-13-22(1), 20-13-22(2).

20:02:20:02 Treatment as temporary disability. An educational institution shall treat disabilities related to pregnancy, childbirth, miscarriage, abortion, or recovery therefrom in the same manner and under the same policies as any other temporary disability or physical condition in every part of its education program or activity, including any medical or hospital benefit, service, plan, or policy which such educational institution administers, operates, offers, or participates in with regard to students admitted to the institution.

General Authority: SDCL 20-13-27. Law Implemented: SDCL 20-13-22(1), 20-13-22(2).

CHAPTER 20:03:21

DISCRIMINATION BECAUSE OF MARITAL OR PARENTAL STATUS

20:03:21:01 Marital or parental status.

20:03:21:01 Marital or parental status. An educational institution shall not apply any rule concerning a student's parental, family, or marital status which treats students differently on the basis of sex.

General Authority: SDCL 20-13-27. Law Implemented: SDCL 20-13-22(1), 20-13-22(2).

CHAPTER 20:03:22

DISCRIMIATION IN HOUSING AND FACILITIES

20:03:22:01 Comparable facilities.
20:03:22:02 Comparable housing.
20:03:22:03 Assistance in obtaining housing for students.

20:03:22:01 Comparable facilities. An educational institution may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.

General Authority: SDCL 20-13-27. Law Implemented: SDCL 20-13-22(1), 20-13-22(2).

20:03:22:02 Comparable housing. An educational institution may provide separate housing on the basis of sex. Housing made available by an educational institution to students of one sex shall be proportionate in quantity and comparable in quality and cost to the student to housing made available to students of the other sex. An educational institution shall not, on the basis of sex, apply different rules or regulations, impose different fees or requirements, or offer different services or benefits related to housing.

General Authority: SDCL 20-13-27. Law Implemented: SDCL 20-13-22(1), 20-13-22(2).

20:03:22:03 Assistance in obtaining housing for students. An educational institution shall not, on the basis of race, color, creed, religion, sex,

national origin, or ancestry, limit off campus housing opportunities by its policies or practices concerning occupancy by its students of such housing. An educational institution which, through solicitation, listing, approval of housing, or otherwise, assists any agency, organization, business, landlord, or person in making housing available to any of its students, shall take such action as may be necessary to ensure that such housing made available to students of one sex is comparable in quantity and quality to that made available to students of the other sex, and shall assure that such agencies, organizations, businesses, landlords, or persons do not discriminate on the basis of race, color, creed, religion, sex, national origin, or ancestry.

General Authority: SDCL 20-13-27. Law Implemented: SDCL 20-13-22(1), 20-13-22(2).